IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of Jeffrey T. Adams, late clerk of the district court of the Territory of Minnesota, have fully considered the same, and now report:

The petitioner alleges that, on the 18th day of August, 1853, he was appointed clerk of the district court for the Territory of Minnesota; that he accepted the said appointment, and remained in office, discharging his duties as clerk, until the 17th of July, 1855. He alleges, also, that the fees of his clerkship did not amount to five hundred dollars annually, and that he is therefore entitled to the benefit of the act regulating fees and costs, approved February 26, 1853, section third:

"That when the compensation of any clerk shall be less than five hundred dollars *per annum*, the difference ascertained and allowed by the proper accounting officer of the Treasury, shall be paid to him therefrom."—*Statutes at Large, volume* 10, *page* 166.

The *first* section of that act is limited to the clerks of district and circuit courts of the United States "in the several States," although the language of the third section would seem to be universal in its application. At all events by a clause in the twelfth section of the civil and diplomatic appropriation act, approved March 3, 1855, the entire act of February 26, 1853, is extended to the Territories of Minnesota, New Mexico, and Utah, as if therein at first named. "This clause," it says, "to take effect from and after the date of said act, and the accounting officers will settle the accounts within its purview accordingly."—*Statutes at Large, volume* 10, *page* 671.

The question remains, whether the appointment of the petitioner, as clerk, was or was not a rightful appointment; that he was clerk, *de facto*, from the 18th of August, 1853, until the 17th of July, 1855, and that all his official acts are valid, so far as they regard the interests of third persons, the committee do not hesitate to acknowledge; but, whatever his claim to fees allowed by law for the discharge of particular services toward a party litigant, or any other individual, he could have no claim (unless rightly appointed) to the salary or compensation

payable by the government to a public officer; that inheres in the office itself, arises from a valid appointment, and does not depend on the performance of any service whatsoever.

The ninth section of the act "to establish the territorial government of Minnesota," approved March 3, 1849, declares—

"The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. * * * * * * Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held."—*Statutes at Large, volume* 9, *page* 406.

Evidently this contemplated that *one* place should be designated for holding a district court in each district, and that each court should have one clerk. It seems that Judge Chatfield construed the statute differently, and appointed several persons, including the petitioner, to the same office of clerk, within his district. The committee see no pretext on which these appointments can be defended, and certainly do not acknowledge the right of Judge Chatfield to burden the government with such an additional expense for the administration of justice. The division of the clerk's office into several parts, by a plurality of appointments, induced the very effect of charging upon the treasury of the United States a deficiency in the emoluments of that office; and the claim now made that each appointee should be allowed the difference between five hundred dollars and the amount of fees which he received under the act of February 26, 1853, raises a suspicion, at least, of abuse rather than of misapprehension.

The petitioner lays much stress on the amendatory act of August 16, 1856, section tenth:

"That it shall be the duty of each of the judges of the supreme court of the respective Territories of the United States to designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and to designate and retain but one such clerk, where more than one is already appointed, and only such district clerks shall be entitled to a compensation from the United States, except for fees taxable to the United States."—*Statutes at Large, volume* 11, *page* 50.

"As this law could apply only to the future," says the memorial, "Congress thus recognized the existence of more than three clerks as having been employed for a short time in Minnesota by the district courts, but abolished the arrangement for the future."

This conclusion, as the committee think, is altogether fanciful. Assuredly, the act does recognize "*the existence*" of more than one person claiming to be clerk in each judicial district; but, treating that as an abuse of the power of appointment by territorial judges, not only forbids the repetition of it, but requires all such appointments previously made, except one, to be canceled. And, as if to take away the temptation which led to that abuse, the next section (eleventh) repeals so much of the act approved February 26, 1853, as authorizes any clerk

to receive from the treasury of the United States the difference between five hundred dollars *per annum* and the amount of his fees or taxable costs.

The petition received all the fees taxable by law for the services which he rendered as clerk, from the 18th of August, 1853, until the 17th of July, 1855, thereby intruding into a public office, and compelling the government of the United States to supply the deficiency in its emoluments caused by such intrusion. The committee are of opinion that his present claim is alike destitute of merit and of legal sanction; and therefore recommend that the prayer of the petitioner be not granted.